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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 871

KAROLINE CAUER ET AL, HEIRS OF WILHELM ADOLF CAUER, DECEASED,
PETITIONERS,

v.

EDWARD J. BRENNER, COMMISSIONER OF PATENTS,
RESPONDENT.
(IN THE MATTER OF THE PATENT APPLICATION OF WILHELM ADOLF CAUER, DECEASED)

PETITION FOR REHEARING

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PETITION FOR REHEARING

Since denying the petition herein,[1] this Court has decided after all to decide your petitioners' first question as to the jurisdiction of the Supreme Court to review, by certiorari, patent decisions of the Court of Customs and Patent Appeals, in *Edward J. Brenner, Commissioner of Patents, Petitioner* v. *Andrew J. Manson*, No. 932, October Term, 1964.

This points up the importance of deciding, also, your petitioners' second question as to the limitation upon the

[1] By order dated April 15, 1965, the Chief Justice extended the time for filing this petition for rehearing to and including May 23, 1965.

jurisdiction of the Court of Customs and Patent Appeals itself that such Court has held, in your petitioners' case, is imposed by 35 U.S.C. 144.[3]

Since denying your petitioners' petition, indeed, this Supreme Court has rendered a further decision *requiring* that courts assume the very duty i legislative interpretation brought out by your petitioners' second question, that the Court of Customs and Patent Appeals has here held it cannot do:

> "In order to determine congressional intent, we *must* examine the purposes and policies underlying the . . . Act itself . . ." (including taking judicial notice of published documents, as in footnote 3), *Otto* v. *Burnett, Petitioner* v. *New York Central Railroad Company*, No. 437, October Term 1964, page 4 of Mr. Justice Goldberg's opinion of April 5, 1965.

This is squarely in conflict with the Court of Customs and Patent Appeals refusal to take judicial notice of the legislative history herein because:

> "Those documents are not part of the record here". (A4)

It is believed of great importance to the thousands of patent and customs litigants in the Court of Customs and Patent Appeals to have the Supreme Court pass on whether, unlike the Supreme Court and other Article III Courts, the Court of Customs and Patent Appeals must, under 35 U.S.C. 144, undertake to interpret statutes without reference to portions of the legislative history not "part of the record" in the Patent Office.

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[3] Petition for Writ of Certiorari, p. 3, 6.

Reconsideration and granting of the petition are thus requested.

Respectfully submitted,

RINES AND RINES

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CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the Rules of this Court.

Attorney for the Petitioners